

HOUSE No. 1482

By Mr. Petrucceli of Boston, petition of Thomas M. Menino and others for legislation to stimulate emerging technologies and job growth in the Commonwealth. Economic Development and Emerging Technologies.

The Commonwealth of Massachusetts

PETITION OF:

Thomas M. Menino	Marie P. St. Fleur
Jeffrey Sánchez	Jarrett T. Barrios
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Martin J. Walsh	John A. Hart Jr.
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In the Year Two Thousand and Five.

AN ACT TO STIMULATE EMERGING TECHNOLOGIES AND JOB GROWTH.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 Section 1. (a) Notwithstanding any special or general law to the
- 2 contrary, the department of revenue shall institute a Massachusetts
- 3 Corporation Tax Benefit Certificate program.
- 4 As used in this section, the following words shall have the
- 5 following meanings:—
- 6 “Affiliated company”, a company that directly or indirectly
- 7 owns or controls 5 per cent or more of the voting rights or 5 per
- 8 cent or more of the value of all classes of stock of the corporation
- 9 surrendering the tax benefit.
- 10 “Department”, the Massachusetts department of revenue.
- 11 “Job growth”, the increase in the number of persons employed
- 12 by a new or expanding company from the beginning to the end of
- 13 a calendar year.
- 14 “New or expanding company”, a corporation that satisfies the
- 15 criteria set forth in subsection (d).
- 16 “Program”, the Massachusetts Corporation Tax Benefit Certifi-
- 17 cate program.

18 “Purchasing corporation”, a corporation that is subject to tax
19 under chapter 63 of the General Laws and that provides financial
20 assistance to a new or expanding company in exchange for a tax
21 benefit certificate. The purchasing corporation may not be an
22 affiliated company.

23 “Tax benefit”, net operating loss carry forward described in
24 paragraph 5 of section 30 of said chapter 63 and the credit for
25 research expenses set forth in section 38M of chapter 63.

26 “Tax benefit amounts eligible for transfer”, in the case of
27 credits, the aggregate amount of credits that the corporation gen-
28 erated but was not able to use as of the close of the last taxable
29 year for which a return was filed, because of limited tax liability
30 or any limitations upon use of credits set forth in this section; in
31 the case of net operating loss carry forwards, the aggregate
32 amount of the net operating loss carry forwards that the corpora-
33 tion generated but was not able to use as of the close of the last
34 taxable year for which a return was filed, because of limited tax
35 liability or any limitations upon use of such carry forwards set
36 forth in said chapter 63, multiplied by the Massachusetts appor-
37 tionment factor of the corporation that generated the carry for-
38 wards for the last taxable year for which a return was filed,
39 multiplied by 9 1/2 per cent.

40 (b) The department shall establish the Massachusetts Tax Credit
41 Certificate Program to allow new or expanding companies doing
42 business in the commonwealth with unused tax benefits to sur-
43 render those tax benefits for use by purchasing corporations in
44 exchange for private financial assistance to be provided by the
45 corporations to assist in the funding of costs incurred by the new
46 or expanding companies. The private financial assistance shall be
47 used to fund expenses incurred in connection with the operation of
48 the new or expanding company in the commonwealth, including
49 but not limited to, costs associated with fixed assets, such as the
50 construction and acquisition and development of real estate, mate-
51 rials, start-up, tenant fit-out, working capital, salaries, research
52 and development expenditures, and any other expenses deter-
53 mined by the department, with the assistance of the Massachusetts
54 office of business development and the Massachusetts Technology
55 Park Corporation, to be necessary to carry out the purposes of the
56 program.

57 (c) A new or expanding company that wishes to participate in
58 the program shall file an application with the department, on a
59 form prescribed by the department, that sets forth the tax benefit
60 amounts eligible for transfer, the use to which the new or
61 expanding company intends to put the private financial assistance
62 to be provided, the identity of the purchasing corporation, the
63 amount of the financial assistance to be provided, and such other
64 information as the department may require. The tax benefits shall
65 not be surrendered unless the purchasing corporation provides
66 financial assistance in an amount at least equal to 75 per cent of
67 the tax benefit amounts eligible for transfer.

68 (d) The department, with the assistance of the Massachusetts
69 Office of Business Development and the Massachusetts Tech-
70 nology Park Corporation, shall review the applications and, if the
71 proposed transfer meets the requirements set forth in this section,
72 it may, upon receipt of adequate evidence that the purchasing cor-
73 poration has provided the specified financial assistance, issue a
74 tax benefit certificate to the purchasing corporation reflecting the
75 tax benefit amounts transferred, a copy of which shall be attached
76 to each tax return filed by a purchasing corporation in which the
77 tax benefits are used. All applications shall be received on or
78 before June 30 for the next succeeding state fiscal year.

79 (e) To receive approval, an applicant shall meet the following
80 criteria:—

81 (1) the applicant shall have more than 15 full-time employees
82 but fewer than 150 full-time employees;

83 (2) the applicant shall satisfy one of the following criteria;

84 (i) At least 10 per cent job growth in each of the last 2 years; or

85 (ii) At least 20 per cent cumulative job growth over the last 2
86 years; or for companies in existence for less than 2 years as of the
87 date of application, job growth that exceeds 10 per cent per cal-
88 endar year on a pro-rate basis;

89 (3) applicants that have surrendered benefits in the past shall
90 demonstrate job growth of not less than 10 per cent in each of the
91 years in which it surrendered benefits; and

92 (4) Applicants shall not be established solely for the purpose of
93 obtaining and transferring tax credits under this section.

94 (f) The department may also consider the following criteria:

95 (1) whether the company has existing contractual relationships
96 with other companies in the commonwealth, charitable corpora-
97 tions, institutions of higher learning or state, regional or local gov-
98 ernments;

99 (2) whether the company's products are sufficiently innovative
100 to provide a competitive advantage;

101 (3) whether the company has sufficient resources to operate in
102 the short term; and

103 (4) whether the proposed financial assistance will result in sig-
104 nificant growth in permanent, full-time employment in the com-
105 monwealth.

106 (g) The department may require certifications or audits to deter-
107 mine compliance with the requirements of subsections (e) and (f).

108 (h) The total amount of the tax credit transfers authorized by
109 the department shall not exceed \$2,000,000 for any given year.
110 The maximum annual value of tax benefits that a corporation may
111 surrender under the program is \$200,000. The maximum cumula-
112 tive value of tax benefits that a corporation may surrender under
113 the program shall not exceed \$1,000,000. No application shall be
114 approved in which the new or expanding company: (1) has
115 demonstrated positive net income in any of the two previous full
116 years of ongoing operations as determined on its financial state-
117 ments; or (2) has demonstrated a ratio in excess of 110 per cent or
118 greater of operating revenues divided by operating expenses in
119 any of the two previous full years of operations as determined on
120 its financial statements; or (3) is directly or indirectly at least 50
121 per cent owned or controlled by another corporation that has
122 demonstrated positive net income in any of the 2 previous full
123 years of ongoing operations as determined on its financial state-
124 ments or is part of a consolidated group of affiliated corporations,
125 as filed for federal income tax purposes, that in the aggregate has
126 demonstrated positive net income in any of the 2 previous full
127 years of ongoing operations as determined on its combined finan-
128 cial statements.

129 (i) The purchasing corporation shall enter into a written agree-
130 ment with the new or expanding company concerning the terms
131 and conditions of the private financial assistance made in
132 exchange for the tax benefit certificate. A copy of the agreement
133 shall be filed with the application. The copy of the agreement

134 shall be subject to section 21 of chapter 62C of the General Laws,
135 but the department may publish statistics so classified as to pre-
136 vent the identification of particular agreements or parties thereto.

137 (j) The purchasing corporation shall treat the tax benefit
138 amounts purchased under the program as a credit against its excise
139 under chapter 63 of the General Laws. The purchasing corporation
140 shall use the tax benefit amounts so treated in tax returns filed
141 within 5 years of the issuance of the certificate, after which the
142 benefits will be considered to have expired. The purchasing cor-
143 poration may not use the tax benefit amounts to reduce the excise
144 to less than the amount due under subsection (b) of section 32 of
145 said chapter 63, subsection (b) of section 39 of said chapter 63, or
146 section 67 of said chapter 63.

147 (k) Any new or expanding company that applies for a tax ben-
148 efit certificate under this program shall pay a non-refundable fee
149 of \$1,000 for its first application and a \$500 fee for its second and
150 subsequent applications.

151 (l) No new or expanding company that has surrendered tax ben-
152 efits under the program may use the benefits to reduce its tax lia-
153 bility under said chapter 63.

154 (m) Tax benefits transferred pursuant to this section may only
155 be used as a credit under the excise due under said chapter 63 for
156 taxable years beginning on or after January 1, 2004. The depart-
157 ment of revenue shall not issue any certificates pursuant to this
158 section after July 1, 2009.

159 (n) The commissioner of revenue shall report on the results of
160 the Massachusetts Corporation Tax Benefit Certificate program
161 set forth in this section, including the numbers of applications
162 received and granted, the amounts of the tax benefits transferred
163 and the forms and uses of private financial assistance provided
164 under the written agreements for the assistance. The commissioner
165 shall file an interim report of results on or before July 1, 2007
166 with the joint committee on taxation and the house and senate
167 committees on ways and means, and shall file a final report with
168 recommendations for further legislative action with the joint com-
169 mittee on taxation and the house and senate committees on ways
170 and means by December 31, 2009.

171 (o) The commissioner of revenue shall promulgate regulations
172 necessary to implement these sections.